

§ 46.193

§ 46.193 Persons liable for floor stocks tax.

A dealer who holds for sale any articles subject to floor stocks tax on April 1, 2009, is liable for floor stocks tax. See §§ 46.204 and 46.205 regarding articles subject to floor stocks tax that are in transit on April 1, 2009 and § 46.206 regarding articles subject to floor stocks tax that are held in a foreign trade zone on April 1, 2009.

§ 46.194 Persons not liable for floor stocks tax.

A person who does not meet the definition of a dealer is not liable for the floor stocks tax under this subpart.

§ 46.195 Floor stocks requirements.

(a) *Take inventory.* The dealer must establish the quantity of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer may take a physical inventory or may use a record (book) inventory, as specified in § 46.202 or § 46.203.

(b) *Compute tax.* The dealer must compute the amount of tax for the articles held for sale on April 1, 2009. Refer to the table in § 46.222. The dealer may apply the tax credit as provided in § 46.223.

(c) *File tax return and pay tax.* After computing the floor stocks tax, the dealer must file a return even if no tax is due. See § 46.233 for payment methods if tax is due.

(d) *Maintain records.* The dealer must maintain all records used to determine the quantity of articles subject to floor stocks tax and the quantity of articles held for sale on April 1, 2009 that are not subject to floor stocks tax. The dealer must also maintain records of all computations used to determine the amount of tax owed. Refer to § 46.241.

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INVENTORIES

§ 46.201 General.

(a) *Date.* The dealer must take an inventory to establish the quantities of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer must take the physical inventory or record (book) inventory not earlier

27 CFR Ch. I (4-1-11 Edition)

than March 26, 2009 and not later than April 10, 2009.

(b) *Reconciliation.* If the dealer takes a physical inventory on any day other than April 1, 2009, the resulting records must be reconciled to reflect the actual quantity of articles held at 12:01 a.m. on April 1, 2009. These records must include all supporting records of receipt and disposition.

(c) *Method.* The dealer may take a physical inventory in accordance with § 46.202 or a record (book) inventory in accordance with § 46.203. The following table lists the taxable articles and the method to use for each to determine quantities:

Article	Inventory method
Small cigarettes	Count the number of cigarettes.
Large cigarettes 6½" or less in length.	Count the number of large cigarettes.
Large cigarettes more than 6½" in length.	Keep a separate count for each size of large cigarette. Count each 2¾", or fraction thereof, as one small cigarette.
Small Cigars	Count the number of small cigars.
Snuff	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Chewing tobacco ...	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Pipe tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Roll-your-own tobacco.	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Cigarette papers 6½" or less in length.	Count the number of cigarette papers, divide by 50, and round up if there is any remainder.
Cigarette papers more than 6½" in length.	Count the number for each size of cigarette paper. Count each 2¾", or fraction thereof, as new cigarette paper. Divide adjusted total by 50 and round up if there is any remainder.
Cigarette tubes 6½" or less in length.	Count the number of cigarette tubes, divide by 50, and round up if there is any remainder.
Cigarette tubes more than 6½" in length.	Count the number for each size of cigarette tube. Count each 2¾", or fraction thereof, as one cigarette tube. Divide adjusted total by 50 and round up if there is any remainder.

§ 46.202 Physical inventory requirements.

The dealer's physical inventory must result in a written record of:

(a) The quantity and type of each article subject to floor stocks tax recorded in sufficient detail to determine the tax rate as stated in § 46.222. See the table in § 46.201(c) for the information required for each type of article;

(b) The date and time the inventory was taken;

(c) The name of the individual(s) conducting the inventory and the name of the dealer for whom the inventory was taken; and

(d) The location where the inventory was taken (street address, city and State).

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§ 46.203 Record (book) inventory requirements.

(a) The dealer may use a record (book) inventory if the dealer has source records that show:

(1) The quantities of receipts and dispositions of all articles subject to floor stocks tax;

(2) The types and quantities of articles actually on hand as if a physical inventory had taken place on April 1, 2009. See the table in § 46.201(c) for the information required for each type of article;

(3) The name and address of the consignor and consignee. For over the counter sales by retail dealers, the consignee name and address is not required;

(4) The date of receipt or disposition of the articles; and

(5) The brand name of each product.

(b) If the dealer does not take the inventory as of the close of business on the last business day before April 1, 2009, the records must be reconciled as provided in § 46.201(b).

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§ 46.204 Articles in transit.

The dealer must include articles subject to floor stocks tax that are in transit in the inventory if the dealer holds title to those articles. If the dealer has transferred title to the article, the dealer must document the title transfer in writing. For example, the dealer may mark the bill of lading with

a written statement that indicates the time and place of the title transfer.

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§ 46.205 Guidelines to determine title to articles in transit.

The dealer may use the following guidelines to establish who holds title to articles in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the articles.

(1) If the shipment is free on board (F.O.B.) destination, the title transfer occurs when the seller completes the physical delivery of the articles.

(2) If the shipment is free on board (F.O.B.) shipping point, the title transfer occurs at the time and place of shipment, which is generally by common carrier.

§ 46.206 Articles in a foreign trade zone.

If articles subject to floor stocks tax are stored in a foreign trade zone established under the Foreign Trade Zone Act (the Act of June 18, 1934, 48 Stat. 998, 19 U.S.C. 81a *et seq.*), the dealer is liable for the tax and must take an inventory in accordance with § 46.207 or when either of the following conditions apply:

(a) Internal revenue taxes have been determined or customs duties liquidated, with respect to the articles pursuant to the first proviso of section 3(a) of the Foreign Trade Zone Act; or

(b) Articles are held by a customs officer pursuant to the second proviso of section 3(a) of the Foreign Trade Zone Act.

§ 46.207 Articles held in bond.

If the dealer is a manufacturer or an export warehouse proprietor and holds articles in TTB bond on April 1, 2009, the floor stocks tax does not apply to